IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO :15725 of 2006

Dated ----August, 2006

Between

K.R. Vijaya Kumar ….Petitioner

And

The Superintendent, Government Hospital for Mental Care, Erragadda, Hyderabad and ors.

….Respondents

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 15725 of 2006

ORDER:

This Writ Petition is filed questioning Proceedings No.A1/1024/2006, dated 18-7-2006 issued by the Superintendent, Government Hospital for Mental Care, Hyderabad, in awarding contract for providing diet to the inpatients and duty doctors for the year 2006-2007 in favour of the third respondent.

As stated in the affidavit filed in support of the Writ Petition, it is the case of the petitioner, that the petitioner was the diet contractor for supplying diet to the inpatients and duty doctors in Government Hospital for Mental Care, Hyderabad for the year 2006-2007. It is

stated that for the year 2006-2007, notification was issued on 17-12-2005 inviting tenders for award of contract and the petitioner and one another contractor had responded to the said notification and tenders were opened on 29-12-2005. It is stated that as the petitioner has offered to supply extra items than the scheduled items notified, he was awarded contract. It is further stated that though contract is for a period of one year, commencing from 1-2-2006 to 30-1-2007, but, however, orders were issued limiting it for a period of six months only. Further, for the period beyond 31-7-2006, the respondents have issued further tender notice on 21-6-2006, pursuant to which, the petitioner also submitted his bid along with the third respondent and the same were opened on 6-7-2006 and contract is awarded in favour of the third respondent. It is stated that even in the tenders submitted pursuant to the tender notice dated 21-6-2006 also, though the petitioner has offered to supply more quantity than the scheduled items notified, but, the respondents have awarded contract in favour of the third respondent illegally and arbitrarily. It is the case of the petitioner that as per the orders issued by the Government in G.O.Ms.No. 22, Health, Medical And Family Welfare (M1) Department, dated 2-2-2005, diet contract has to be awarded for a minimum period of one year and maximum period of three years at a stretch; as such, the action of the respondents in issuing tender notice dated 21-6-2006 and awarding contract to the third respondent by impugned proceedings is illegal and arbitrary.

In the counter affidavit filed on behalf of the respondents 1 and 2, it is stated that pursuant to the tender notice dated 17-12-2005, published on 18-12-2005, the petitioner and one other contractor have responded to the same, and the petitioner had mentioned that he will supply more items than the quantity of food prescribed by the

respondents. After verification of the tenders submitted by the two bidders, in view of the approval given by the Chairman, Hospital Development Society, contract was awarded to the petitioner limiting to the period of six months on trial basis. It is also stated that tender notice was issued inviting tenders for supply of diet for one year, but however, as only two bidders have responded to the said tender notice, contract was awarded in favour of the petitioner limiting it for a period of six months on trial basis. It is stated that proceedings No.A1/1024/2006, dated 21-1-2006 were issued awarding contract only for a period of six months. Further, it is stated that when the petitioner has started supplying the food to the inpatients and duty doctors, there are several complaints regarding supply of less quantity of food and not maintaining quality in serving vegetable curries and dhall. It is also stated that the petitioner was issued Memo dated 1-2-2006 for giving stale food to the patients in female ward on 27-2-2006. It is stated that in spite of warning, the petitioner continued to do the same mistake by not supplying adequate food to the patients, failed to keep sufficient experienced cooks and also not keeping the surroundings clean. It is further stated that as the term of the present contract has come to an end on 31-7-2006, tenders were called for by issuing notification on 21-6-2006 and though the petitioner responded to the said tender notice, but however, by negotiating with the third respondent, contract is awarded to the third respondent. It is stated that the said negotiations with the third respondent were due to adverse experience faced by all the inpatients, doctors and hospital administration due to irresponsible, callous, and un-correctional behaviour of the petitioner in not supplying proper food to the inpatients and duty doctors. Further, it is stated that as much as the petitioner himself has responded to the tender notice dated 21-6-2006, he cannot question the said tender notice.

In this Writ Petition, it is submitted by Sri P. Venkat Swamy, learned Counsel appearing for the petitioner that as per the tender notice, contract is notified for a period of one year and as his bid was accepted, he is entitled to continue for the period of one year commencing from 1-2-2006 to 31-2-2007. It is further submitted that in any event, even pursuant to the tender notice dated 21-6-2006, as the petitioner had offered more quantity of food than notified in the tender notice, there is no valid reason to negotiate with the third respondent and award contract for supply of diet to the inpatients and duty doctors for the year 2006-2007.

On the other had, it is submitted by the learned Government Pleader appearing for the first and second respondents that though tender notice was issued for a period of one year, earlier, but however, as only two bidders have responded to the tender notice, orders were issued awarding the contract only for a period of six months from 1-2-2006 on trial basis. It is submitted that as the petitioner was not supplying the diet as per the notified quantity and was also not maintaining quality in supplying food and curries to the duty doctors and inpatient, his contract was not extended and further tender notice was issued inviting bids. It is further submitted that even pursuant to the tender notice dated 21-6-2006, as only two tenderers have submitted bids, and, in view of adverse experience by the inpatients and duty doctors with the food supplied by the petitioner, negotiations were made with the third respondent and orders were issued awarding contract in his favour.

With reference to the above submissions, in this case, it is to be seen, though, earlier, tender notice was issued inviting bids for a period of one year, but, ultimately, diet contract was awarded and

agreement was entered into by the petitioner with the respondents fixing the contract period of six moths effective from 1-2-2006. Merely because tender notice was issued inviting bids for a period of one year, in absence of any contract by entering into agreement for such a period of one year, it is not open for the petitioner to plead that he is entitled to supply diet for the period of one year. In the agreement, period of contract is mentioned as six months, and that too, on trial basis; as such, it is open for respondents to go for fresh tender notice, in case the respondents are not satisfied with the performance of the contract of the petitioner within the above period of six months. In any event, it is to be seen, even pursuant to the tender notice dated 21-6-2006, the petitioner himself responded to the said tender notice, and, merely because contract is not awarded to him, he cannot go back and plead that his contract is for a period of one year. Even with reference to the tender notice dated 21-6-2006, it is to be seen, only two bidders have submitted bids, i.e. petitioner and third respondent. Though, it is the case of the petitioner that he has been supplying more quantities than the notified diet schedules by maintaining quality, but however, from the beginning of the contract, there are complaints and there is also a report by the dietitian against the petitioner. The various proceedings filed as material papers along with the counter affidavit by the respondents consistently indicate that there were complaints against the petitioner regarding quantity and quality of food he was supplying to the inpatients and duty doctors, and, it was the case of the respondents that in spite of warnings he did not improve supplies. Though, in normal course, offer of the highest bidder is to be considered, but at the same time, he will not have any right to claim for award of contract in his favour. In this case, there are valid reasons for negotiating with the third respondent. In contracts of this nature, not only the bids, but also the interest of inpatients is paramount

consideration for award of contract. In view of complaints and adverse report against the petitioner, merely because negotiations were made with the third respondent and on approval of the Chairman of the Hospital Development Society, contract is awarded in favour of the third respondent, award of contract cannot be said to be illegal and arbitrary.

For the foregoing reasons, I do not find any merit in the Writ Petition, which warrants interference with the impugned proceedings awarding contract in favour of the third respondent.

The Writ Petition is devoid of merits and the same is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: ---August, 2006.
Msnr.